

ASSEMBLY BILL

No. 1310

Introduced by Assembly Member Gatto

February 27, 2015

An act to amend Sections 786 and 1524 of the Penal Code, relating to disorderly conduct.

LEGISLATIVE COUNSEL'S DIGEST

AB 1310, as introduced, Gatto. Disorderly conduct: unlawful distribution of image.

Existing law makes it a misdemeanor to look through a hole or opening, into, or to view, by means of any instrumentality, the interior of an area in which an occupant has a reasonable expectation of privacy with the intent to invade the privacy of that person. Existing law makes it a misdemeanor to record another person under or through the clothing worn by that person, without the consent or knowledge of the person, under circumstances in which the person has a reasonable expectation of privacy. Existing law makes it a misdemeanor to secretly record another person in a state of full or partial undress without the consent or knowledge of that person, in an area in which that person has a reasonable expectation of privacy. Existing law makes it a misdemeanor to intentionally distribute an image of the intimate body part or parts of another person, or an image of the person depicted engaging in specified sexual acts, under circumstances in which the persons agree or understand that the image remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress.

Existing law establishes the proper jurisdictions of a criminal action for unauthorized use, retention, or transfer of personal identifying

information to include the county where the theft occurred, the county in which the victim resided at the time of the offense, or the county where the information was used for an illegal purpose. Existing law authorizes issuance of a search warrant on various grounds, including when the property or things to be seized consist of evidence that tends to show possession of matter depicting sexual conduct of a person under 18 years of age.

This bill would apply those jurisdictional and search warrant provisions to the misdemeanors described above.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 786 of the Penal Code is amended to
2 read:

3 786. (a) When property taken in one jurisdictional territory
4 by burglary, carjacking, robbery, theft, or embezzlement has been
5 brought into another, or when property is received in one
6 jurisdictional territory with the knowledge that it has been stolen
7 or embezzled and the property was stolen or embezzled in another
8 jurisdictional territory, the jurisdiction of the offense is in any
9 competent court within either jurisdictional territory, or any
10 contiguous jurisdictional territory if the arrest is made within the
11 contiguous territory, the prosecution secures on the record the
12 defendant's knowing, voluntary, and intelligent waiver of the right
13 of vicinage, and the defendant is charged with one or more property
14 crimes in the arresting territory.

15 (b) (1) The jurisdiction of a criminal action for unauthorized
16 use, retention, or transfer of personal identifying information, as
17 defined in subdivision (b) of Section 530.55, shall also include the
18 county where the theft of the personal identifying information
19 occurred, the county in which the victim resided at the time the
20 offense was committed, or the county where the information was
21 used for an illegal purpose. If multiple offenses of unauthorized
22 use of personal identifying information, either all involving the
23 same defendant or defendants and the same personal identifying
24 information belonging to the one person, or all involving the same
25 defendant or defendants and the same scheme or substantially
26 similar activity, occur in multiple jurisdictions, then any of those

1 jurisdictions is a proper jurisdiction for all of the offenses.
2 Jurisdiction also extends to all associated offenses connected
3 together in their commission to the underlying identity theft offense
4 or identity theft offenses.

5 (2) When charges alleging multiple offenses of unauthorized
6 use of personal identifying information occurring in multiple
7 territorial jurisdictions are filed in one county pursuant to this
8 section, the court shall hold a hearing to consider whether the
9 matter should proceed in the county of filing, or whether one or
10 more counts should be severed. The district attorney filing the
11 complaint shall present evidence to the court that the district
12 attorney in each county where any of the charges could have been
13 filed has agreed that the matter should proceed in the county of
14 filing. In determining whether all counts in the complaint should
15 be joined in one county for prosecution, the court shall consider
16 the location and complexity of the likely evidence, where the
17 majority of the offenses occurred, whether or not the offenses
18 involved substantially similar activity or the same scheme, the
19 rights of the defendant and the people, and the convenience of, or
20 hardship to, the victim and witnesses.

21 (3) When an action for unauthorized use, retention, or transfer
22 of personal identifying information is filed in the county in which
23 the victim resided at the time the offense was committed, and no
24 other basis for the jurisdiction applies, the court, upon its own
25 motion or the motion of the defendant, shall hold a hearing to
26 determine whether the county of the victim's residence is the proper
27 venue for trial of the case. In ruling on the matter, the court shall
28 consider the rights of the parties, the access of the parties to
29 evidence, the convenience to witnesses, and the interests of justice.

30 *(c) (1) The jurisdiction of a criminal action for conduct*
31 *specified in subdivision (j) of Section 647 shall also include the*
32 *county in which the offense occurred, the county in which the victim*
33 *resided at the time the offense was committed, or the county in*
34 *which the intimate image was used for an illegal purpose. If*
35 *multiple offenses of unauthorized distribution of an intimate image,*
36 *either all involving the same defendant or defendants and the same*
37 *intimate image belonging to the one person, or all involving the*
38 *same defendant or defendants and the same scheme or substantially*
39 *similar activity, occur in multiple jurisdictions, then any of those*
40 *jurisdictions is a proper jurisdiction for all of the offenses.*

1 *Jurisdiction also extends to all associated offenses connected*
2 *together in their commission to the underlying unauthorized*
3 *distribution of an intimate image.*

4 *(2) When charges alleging multiple offenses of unauthorized*
5 *distribution of an intimate image occurring in multiple territorial*
6 *jurisdictions are filed in one county pursuant to this section, the*
7 *court shall hold a hearing to consider whether the matter should*
8 *proceed in the county of filing, or whether one or more counts*
9 *should be severed. The district attorney filing the complaint shall*
10 *present evidence to the court that the district attorney in each*
11 *county where any of the charges could have been filed has agreed*
12 *that the matter should proceed in the county of filing. In*
13 *determining whether all counts in the complaint should be joined*
14 *in one county for prosecution, the court shall consider the location*
15 *and complexity of the likely evidence, where the majority of the*
16 *offenses occurred, whether the offenses involved substantially*
17 *similar activity or the same scheme, the rights of the defendant*
18 *and the people, and the convenience of, or hardship to, the victim*
19 *and witnesses.*

20 *(3) When an action for unauthorized distribution of an intimate*
21 *image is filed in the county in which the victim resided at the time*
22 *the offense was committed, and no other basis for the jurisdiction*
23 *applies, the court, upon its own motion or the motion of the*
24 *defendant, shall hold a hearing to determine whether the county*
25 *of the victim's residence is the proper venue for trial of the case.*
26 *In ruling on the matter, the court shall consider the rights of the*
27 *parties, the access of the parties to evidence, the convenience to*
28 *witnesses, and the interests of justice.*

29 ~~(e)~~
30 ~~(d) This section shall not be interpreted to does not alter victims'~~
31 ~~rights under Section 530.6.~~

32 SEC. 2. Section 1524 of the Penal Code is amended to read:
33 1524. (a) A search warrant may be issued upon any of the
34 following grounds:

35 (1) When the property was stolen or embezzled.

36 (2) When the property or things were used as the means of
37 committing a felony.

38 (3) When the property or things are in the possession of any
39 person with the intent to use them as a means of committing a
40 public offense, or in the possession of another to whom he or she

1 may have delivered them for the purpose of concealing them or
2 preventing them from being discovered.

3 (4) When the property or things to be seized consist of any item
4 or constitute any evidence that tends to show a felony has been
5 committed, or tends to show that a particular person has committed
6 a felony.

7 (5) When the property or things to be seized consist of evidence
8 that tends to show that sexual exploitation of a child, in violation
9 of Section 311.3, or possession of matter depicting sexual conduct
10 of a person under 18 years of age, in violation of Section 311.11,
11 *or conduct in violation of subdivision (j) of Section 647*, has
12 occurred or is occurring.

13 (6) When there is a warrant to arrest a person.

14 (7) When a provider of electronic communication service or
15 remote computing service has records or evidence, as specified in
16 Section 1524.3, showing that property was stolen or embezzled
17 constituting a misdemeanor, or that property or things are in the
18 possession of any person with the intent to use them as a means
19 of committing a misdemeanor public offense, or in the possession
20 of another to whom he or she may have delivered them for the
21 purpose of concealing them or preventing their discovery.

22 (8) When the property or things to be seized include an item or
23 any evidence that tends to show a violation of Section 3700.5 of
24 the Labor Code, or tends to show that a particular person has
25 violated Section 3700.5 of the Labor Code.

26 (9) When the property or things to be seized include a firearm
27 or any other deadly weapon at the scene of, or at the premises
28 occupied or under the control of the person arrested in connection
29 with, a domestic violence incident involving a threat to human life
30 or a physical assault as provided in Section 18250. This section
31 does not affect warrantless seizures otherwise authorized by Section
32 18250.

33 (10) When the property or things to be seized include a firearm
34 or any other deadly weapon that is owned by, or in the possession
35 of, or in the custody or control of, a person described in subdivision
36 (a) of Section 8102 of the Welfare and Institutions Code.

37 (11) When the property or things to be seized include a firearm
38 that is owned by, or in the possession of, or in the custody or
39 control of, a person who is subject to the prohibitions regarding
40 firearms pursuant to Section 6389 of the Family Code, if a

1 prohibited firearm is possessed, owned, in the custody of, or
2 controlled by a person against whom a protective order has been
3 issued pursuant to Section 6218 of the Family Code, the person
4 has been lawfully served with that order, and the person has failed
5 to relinquish the firearm as required by law.

6 (12) When the information to be received from the use of a
7 tracking device constitutes evidence that tends to show that either
8 a felony, a misdemeanor violation of the Fish and Game Code, or
9 a misdemeanor violation of the Public Resources Code has been
10 committed or is being committed, tends to show that a particular
11 person has committed a felony, a misdemeanor violation of the
12 Fish and Game Code, or a misdemeanor violation of the Public
13 Resources Code, or is committing a felony, a misdemeanor
14 violation of the Fish and Game Code, or a misdemeanor violation
15 of the Public Resources Code, or will assist in locating an
16 individual who has committed or is committing a felony, a
17 misdemeanor violation of the Fish and Game Code, or a
18 misdemeanor violation of the Public Resources Code. A tracking
19 device search warrant issued pursuant to this paragraph shall be
20 executed in a manner meeting the requirements specified in
21 subdivision (b) of Section 1534.

22 (13) When a sample of the blood of a person constitutes
23 evidence that tends to show a violation of Section 23140, 23152,
24 or 23153 of the Vehicle Code and the person from whom the
25 sample is being sought has refused an officer's request to submit
26 to, or has failed to complete, a blood test as required by Section
27 23612 of the Vehicle Code, and the sample will be drawn from
28 the person in a reasonable, medically approved manner. This
29 paragraph is not intended to abrogate a court's mandate to
30 determine the propriety of the issuance of a search warrant on a
31 case-by-case basis.

32 (14) Beginning January 1, 2016, the property or things to be
33 seized are firearms or ammunition or both that are owned by, in
34 the possession of, or in the custody or control of a person who is
35 the subject of a gun violence restraining order that has been issued
36 pursuant to Division 3.2 (commencing with Section 18100) of
37 Title 2 of Part 6, if a prohibited firearm or ammunition or both is
38 possessed, owned, in the custody of, or controlled by a person
39 against whom a gun violence restraining order has been issued,

1 the person has been lawfully served with that order, and the person
2 has failed to relinquish the firearm as required by law.

3 (b) The property, things, person, or persons described in
4 subdivision (a) may be taken on the warrant from any place, or
5 from any person in whose possession the property or things may
6 be.

7 (c) Notwithstanding subdivision (a) or (b), ~~no search warrant~~
8 ~~shall~~ *a search warrant shall not* issue for any documentary
9 evidence in the possession or under the control of any person who
10 is a lawyer as defined in Section 950 of the Evidence Code, a
11 physician as defined in Section 990 of the Evidence Code, a
12 psychotherapist as defined in Section 1010 of the Evidence Code,
13 or a member of the clergy as defined in Section 1030 of the
14 Evidence Code, and who is not reasonably suspected of engaging
15 or having engaged in criminal activity related to the documentary
16 evidence for which a warrant is requested unless the following
17 procedure has been complied with:

18 (1) At the time of the issuance of the warrant, the court shall
19 appoint a special master in accordance with subdivision (d) to
20 accompany the person who will serve the warrant. Upon service
21 of the warrant, the special master shall inform the party served of
22 the specific items being sought and that the party shall have the
23 opportunity to provide the items requested. If the party, in the
24 judgment of the special master, fails to provide the items requested,
25 the special master shall conduct a search for the items in the areas
26 indicated in the search warrant.

27 (2) (A) If the party who has been served states that an item or
28 items should not be disclosed, they shall be sealed by the special
29 master and taken to court for a hearing.

30 (B) At the hearing, the party searched shall be entitled to raise
31 any issues that may be raised pursuant to Section 1538.5 as well
32 as a claim that the item or items are privileged, as provided by
33 law. The hearing shall be held in the superior court. The court shall
34 provide sufficient time for the parties to obtain counsel and make
35 any motions or present any evidence. The hearing shall be held
36 within three days of the service of the warrant unless the court
37 makes a finding that the expedited hearing is impracticable. In that
38 case the matter shall be heard at the earliest possible time.

39 (C) If an item or items are taken to court for a hearing, any
40 limitations of time prescribed in Chapter 2 (commencing with

1 Section 799) of Title 3 of Part 2 shall be tolled from the time of
2 the seizure until the final conclusion of the hearing, including any
3 associated writ or appellate proceedings.

4 (3) The warrant shall, whenever practicable, be served during
5 normal business hours. In addition, the warrant shall be served
6 upon a party who appears to have possession or control of the
7 items sought. If, after reasonable efforts, the party serving the
8 warrant is unable to locate the person, the special master shall seal
9 and return to the court, for determination by the court, any item
10 that appears to be privileged as provided by law.

11 (d) (1) As used in this section, a “special master” is an attorney
12 who is a member in good standing of the California State Bar and
13 who has been selected from a list of qualified attorneys that is
14 maintained by the State Bar particularly for the purposes of
15 conducting the searches described in this section. These attorneys
16 shall serve without compensation. A special master shall be
17 considered a public employee, and the governmental entity that
18 caused the search warrant to be issued shall be considered the
19 employer of the special master and the applicable public entity,
20 for purposes of Division 3.6 (commencing with Section 810) of
21 Title 1 of the Government Code, relating to claims and actions
22 against public entities and public employees. In selecting the
23 special master, the court shall make every reasonable effort to
24 ensure that the person selected has no relationship with any of the
25 parties involved in the pending matter. Any information obtained
26 by the special master shall be confidential and may not be divulged
27 except in direct response to inquiry by the court.

28 (2) In any case in which the magistrate determines that, after
29 reasonable efforts have been made to obtain a special master, a
30 special master is not available and would not be available within
31 a reasonable period of time, the magistrate may direct the party
32 seeking the order to conduct the search in the manner described
33 in this section in lieu of the special master.

34 (e) Any search conducted pursuant to this section by a special
35 master may be conducted in a manner that permits the party serving
36 the warrant or his or her designee to accompany the special master
37 as he or she conducts his or her search. However, that party or his
38 or her designee may not participate in the search nor shall he or
39 she examine any of the items being searched by the special master

1 except upon agreement of the party upon whom the warrant has
2 been served.

3 (f) As used in this section, “documentary evidence” includes,
4 but is not limited to, writings, documents, blueprints, drawings,
5 photographs, computer printouts, microfilms, X-rays, files,
6 diagrams, ledgers, books, tapes, audio and video recordings, films,
7 and papers of any type or description.

8 (g) ~~No warrant shall~~ *A warrant shall not* issue for any item or
9 items described in Section 1070 of the Evidence Code.

10 (h) Notwithstanding any other law, ~~no~~ a claim of attorney work
11 product as described in Chapter 4 (commencing with Section
12 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall
13 ~~not~~ be sustained ~~where if~~ there is probable cause to believe that
14 the lawyer is engaging or has engaged in criminal activity related
15 to the documentary evidence for which a warrant is requested
16 unless it is established at the hearing with respect to the
17 documentary evidence seized under the warrant that the services
18 of the lawyer were not sought or obtained to enable or aid anyone
19 to commit or plan to commit a crime or a fraud.

20 (i) ~~Nothing in this section is~~ *This section is not* intended to limit
21 an attorney’s ability to request an in camera hearing pursuant to
22 the holding of the Supreme Court of California in *People v.*
23 *Superior Court (Laff) (2001) 25 Cal.4th 703.*

24 (j) In addition to any other circumstance permitting a magistrate
25 to issue a warrant for a person or property in another county, when
26 the property or things to be seized consist of any item or constitute
27 any evidence that tends to show a violation of Section 530.5, the
28 magistrate may issue a warrant to search a person or property
29 located in another county if the person whose identifying
30 information was taken or used resides in the same county as the
31 issuing court.

32 (k) This section ~~shall not be construed to~~ *does not* create a cause
33 of action against any foreign or California corporation, its officers,
34 employees, agents, or other specified persons for providing location
35 information.